IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3230 OF 2006

Sudhir Haribhau Nichite Applicant
versus
The State of Maharashtra Respondent

Shri P.M.Pradhan i/by Shri A.R.Pitale for applicant.

Shri P.S.Hingorani - APP for respondent.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 4th September 2006

PC :

1. The applicant apprehends arrest in CR No.I-127 of 2006 registered at Shahapur Police Station for the offences punishable under sections 302, 201 R/W 34 IPC.

2. It is well settled that normally in a case where offence alleged is under section 302, anticipatory bail is not granted. Such a relief is exceptional, while the investigations are in progress and the offence is of the above nature.

3. However, the learned counsel appearing for

the applicant points out that a complaint was lodged at Shahapur Police Station on 24th June 2006 by the complainant and it is his statement that when he had been to Village Vasind for his personal work he met the ex-Deputy Sarpanch of that village, who told him that one dead body is lying in Vehaloli Jungle and asked him to get it confirmed. Therefore, on 24th June 2006 at about 9.00 a.m. when he was proceeding to the jungle he saw a male body lying in the bushes. The body was totally decomposed. The complainant did not know the person and it was reported that some unknown person has committed the murder for unknown reason. On suspicion, one Harishchandra Mukane was arrested and in the remand report the names of about nine persons, as suspected accused, including the present applicant, were mentioned. The applicant contends that he is a reputed social worker and has a clean and unblemished image. He has been falsely implicated in the crime and therefore, applied for anticipatory bail. The applicant’s specific contention in para 5 of this application is that although remand report of 29th June 2006 shows him as an absconding accused, the local police never came to his house for search or for his arrest. He is very much available at his house

but no attempt was made to summon him for enquiry.

4. The dead body was later on identified to be of one Bhau Govind Nichite. The Police recorded statement of his wife. She states that her husband went for night duty on 21st June 2006 and did not come back as usual on the next day. The police came two days later and took her to identify the dead body, which she identified. She states that all accused including the present applicant had threatened her husband few days back. The arrested accused had assaulted her husband on instigation of one Raghunath Nichite on 13th June 2006.

5. In all fairness, it is not disputed by the APP that the arrested co-accused including Harischandra Mukane preferred regular bail application for enlargement on bail. This application has been allowed by the learned 3rd Ad-hoc Sessions Judge, Kalyan. There are clear findings, that, prima facie there is no direct evidence or eye witness to the incident. The applicant, therefore, points out that the bail application of all the accused on same prima facie findings, have been granted, whereas his

application for anticipatory bail is rejected.

6. All that the prosecution desires, according to the applicant, is that he should be arrested and the same course would then follow as far as his case is concerned.

7. The applicant has pointed out that there are no antecedents as against him. He is residing at the address mentioned in the cause title and enjoys a good and clean reputation because of his social work. On account of political rivalry, in a false case, he has been involved and there is absolutely no incriminating material collected during the course of the investigation till date.

8. The applicant has made a specific statement that he would extend all co-operation in the investigation.

9. After perusal of the application and the annexures thereto including the orders passed by the learned Sessions Judge on the application for being enlarged on bail by the co-accused, in my view, the ingredients of Section 438 as applicable in the State of Maharashtra, are satisfied and a case is made out for pre-arrest

bail.

10. I need not refer to each and every finding of the learned Sessions Judge save and except para 6 wherein the learned Judge admits that there is no direct or circumstantial evidence at this stage as against applicant and yet proceeds to deny anticipatory bail. The submission with regard to malafides and political rivalry is also noted. However, on the same grounds he has enlarged the other co-accused on regular bail.

11. In the circumstances, the following order would meet the ends of justice.

12. ORDER :-

(i) In the event of the arrest of the applicant in connection with C.R.No.I-127 of 2006 registered at Shahapur Police Station the applicant shall be enlarged on bail subject to furnishing P.R.Bond in the sum of Rs.15,000/- (Rs.Fifteen thousand only) with one or two local sureties in the like sum;

(ii) The bail is granted subject to condition that the applicant will attend Shahapur Police

Station once in a week till filing of charge sheet;

(iii) The bail is granted subject to condition that the applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of accusation against him so as to dissuade him from disclosing such facts to the Court or to the Police Officer/Investigating Agency. The applicant shall not tamper with the prosecution evidence.

(iv) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

(v) This order will enure to the benefit of the applicant only till charge sheet is filed. Thereafter, he will be free to apply to the appropriate Court for appropriate relief.

(vi) Application is disposed of in the above terms.

(S.C.DHARMADHIKARI, J.)